



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE
DIRECTOR

December 30, 1991
AO-91-29

Thomas R. Kiley, Esq.
Cosgrove, Eisenberg and Kiley, P.C.
Counselors At Law
One International Place, Suite 820
Boston, MA 02110

Re: Personal Financial Assistance to a Candidate

Dear Mr. Kiley:

This letter is in response to your November 22, 1991, letter requesting an advisory opinion regarding the provision of personal financial assistance to Rep. Timothy O'Leary and his family by your client and others.

You have stated that you represent Paul Roche, the Treasurer of the Committee to Elect Timothy O'Leary ("Committee"). On behalf of your client you are seeking this Office's opinion regarding the publicly stated desire of family, friends and professional acquaintances of Representative Timothy O'Leary to assist him and his family alleviate their financial pressure. Mindful of the limitations (statutory and regulatory) on contributions and expenditures set forth generally in the campaign finance laws, M.G.L. c.55, and with more particularity in 970 CMR 1.00 et seq., your client has concluded that the Committee he serves does not provide a vehicle by which financial assistance for the O'Leary family may be solicited and received.

As a result of this above conclusion, you ask whether Mr. Roche and/or others associated with the defense and rehabilitation of Mr. O'Leary can establish a separate entity to solicit and receive contributions from private persons (a) for the support of Mr. O'Leary's family, (b) pay for his defense and treatment and (c) assist in the elimination of his obligations to private clients and the Committee. Further, you ask if Mr. Roche and/or others associated with the defense and rehabilitation of Rep. O'Leary (such as the three lawyers whom you have copied on your letter requesting this Office's advice)

may receive contributions without setting up such an entity consistent with campaign finance laws and regulations.

M.G.L. c.55 provides, in pertinent part, that a state representative's political committee:

may receive, pay and expend money or other things of value for the enhancement of the political future of the candidate . . . for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use . . . (emphasis supplied) "

It is the opinion of this Office that the primary purpose of assisting Rep. O'Leary and/or his family with the financial matters referenced in your letter and described above would clearly be for Rep. O'Leary's and/or his family's personal use.¹ Therefore, we would agree with your client's conclusion that the Committee may not be used, in any way, to provide such financial assistance. See M.G.L. c.55, s.1 "Contribution."

There are a number of implications which arise from the above conclusion. First, since the described financial assistance is "personal" within the meaning of M.G.L. c.55, s.6, it follows logically that Rep. O'Leary has access (subject to the limitations discussed below) to the same types of financial sources as any other individual needing financial help during troubled times. For example, Mr. O'Leary may ask for financial help from family or friends or seek a loan from a financial institution. Similarly, family and friends of Rep. O'Leary may provide financial assistance to Rep. O'Leary and his family through gifts or loans. See AO-91-22. Therefore, family, friends and professional colleagues may individually or through some private entity make gifts and/or loans for the support of Mr. O'Leary's family, for his personal legal defense and/or personal treatment and to help eliminate obligations to private clients.²

The conclusions of the previous paragraph are, as noted, subject to certain limitations. First, Rep. O'Leary must

1. In the context of section 6 and regulations issued pursuant thereto, the phrase "personal use" is a term of art which includes any non-political use such as business, governmental, legislative, family and social use. See AO-91-06.

2. Since such gifts or loans would be for the purpose of paying a personal expense and not "for the purpose of influencing the nomination or election of a candidate," they would not be subject to M.G.L. c.55, including the reporting and contribution limitations set forth in sections 7 and 18 (See M.G.L. c.55, s.1), although they may be subject to M.G.L. c. 268A, the conflict-of-interest law.

refrain from using, in any way, his status as a candidate or the Committee's assets when seeking personal financial assistance. For example, Rep. O'Leary could not use a contributor list or labels (hand or computer produced) developed or maintained by the Committee to solicit funds for personal reasons. Second, neither your client nor any other person may hold any type of fundraising event of the type prohibited by M.G.L. c.55, s.1 which provides, in pertinent part:

Notwithstanding any other provisions of this chapter, any receipt or disbursement of any money or anything of value by an individual, or person acting on behalf of said individual, which is not otherwise a "contribution" or "expenditure" as defined in this section, resulting from any purchases from said individual, or any person acting on behalf of said individual, whether through the device of tickets, advertisements, or otherwise, for any fund-raising activity, including a testimonial held on behalf of said individual, regardless of the purpose of said activity, shall be deemed to be a "contribution" or "expenditure" if said individual . . . holds elective public office . . . at the time of said receipt or disbursement . . . (emphasis supplied).

Third, no financial assistance such as gifts or loans from any person for Rep. O'Leary's personal use may be used by Rep. O'Leary or your client to assist Rep. O'Leary in the elimination of any financial obligations he may have to his political committee. Such gifts or loans or other financial assistance would clearly constitute a "contribution" as defined by M.G.L. c.55, s.1 and would be subject to all the restrictions and limitations imposed upon contributions by the campaign finance laws. For example, if the purpose of a \$5,000 gift to Rep. O'Leary was to permit Rep. O'Leary to reimburse his political committee \$5,000, such a gift would, in fact, be a political contribution and in violation of M.G.L. c.55, ss.7 and 10.

In addition, we would caution you that there are probably additional restrictions and limitations imposed by the conflict-of-interest law, M.G.L. c.268A, due to Rep. O'Leary's holding the position of a state representative. See M.G.L. c.268A, ss. 3 and 23 (b)(2) and (b)(3). These provisions may, for example, prohibit state legislators, other state employees and persons with an interest in legislation from soliciting for or making gifts to Rep. O'Leary. For advice on these matters I urge your client or Rep. O'Leary to consult the State Ethics Commission.

As a final cautionary note, we strongly recommend that your client, Rep. O'Leary or any other person making or receiving

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gifts or loans or providing other financial assistance to Rep. O'Leary and/or his family act with unusual care to insure that the delineation between personal assistance and political contributions is clearly maintained and that Rep. O'Leary and/or other elected officials or public employees be very careful not to use their official position in any way to provide such financial assistance. See 970 CMR 1.04 (8). Indeed, since this opinion is designed only to provide guidance relative to the general questions which you raised it should not be viewed as an approval of any specific fundraising activity contemplated by Rep. O'Leary and/or the Committee. Therefore, I would strongly recommend that you review any specific plans to raise funds for Rep. O'Leary and his family with this Office prior to commencing such activity.

This opinion has been rendered solely on the basis of the representations in your letters and solely on the basis of M.G.L. c.55.

Should you have any further questions regarding this or any other campaign finance matter, please do not hesitate to contact this Office.

Very truly yours,

Mary F. McTigue

Mary F. McTigue
Director

MFM/wp